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|-----------------|-------------|----------------------|------------------------|------------------|
| 09/748,788      | 12/22/2000  | Robert S. Young JR.  | ASF98078 (021971.0159) | 3326             |

7590

02/22/2005

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EXAMINER

GIBBS, HEATHER D

ART UNIT

PAPER NUMBER

2622

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/748,788

Applicant(s)

YOUNG ET AL.

Examiner

Heather D Gibbs

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

1. The amendment filed on 11/22/2004 had been entered and made of record. Claims 1-32 are pending.

### *Response to Arguments*

2. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

### *Allowable Subject Matter*

3. The indicated allowability of claims 21-25 is withdrawn in view of the newly discovered reference(s) to Young Jr. et al (US 6,788,335). Rejections based on the newly cited reference(s) follow.

### *Double Patenting*

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-32 are rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-10 of U. S. Patent No. 6,788,335. The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the

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patent since the patent and the application are claiming common subject matter, as follows:  
signal modulation adjustment between comprising a first light source; a first sensor operable to capture light reflected from film illuminated by the first light source; a reference (second) sensor operable to capture light reflected from a reference target illuminated by the first light source; and a processing circuitry coupled to the first sensor...as further discussed in the specification. See rejection below.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Young Jr. et al (US 6,788,335)

The applied reference has a common signal modulation adjustment method with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not

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claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claim 1, which is representative of claims 7,28, Young teaches A digital film processing system, comprising: a first light source operable to illuminate film; a first sensor operable to produce a first output in response to a first amount of light reflected from the film for a first time interval; a second sensor operable to produce a second output in response to a second amount of light passed through the film for the first time interval; and processing circuitry coupled to the first light source and operable to adjust the output of the first light source in response to the first and second outputs so that the first sensor and the second sensor do not saturate (Col 9 Lines 21-26; Col 10 Lines 22-61; Fig 2B).

Considering claim 2, Young teaches the system of claim 1, wherein the processing circuitry is further operable to adjust image data obtained from the film in response to the first and second outputs (Col 10 Lines 62-67).

Regarding claim 3, which is representative of claim 12, Young teaches the system of claim 1, wherein the processing circuitry is further operable to adjust the output of the first light source in response to a film type (Col 10 Lines 48-62).

Regarding claim 4, which is representative of claim 11, Young discloses the system of claim 1, wherein the first amount of light is reflected from at least one unexposed region of the film and the second amount of light is passed through the at least one unexposed region of the film (Col 16 Lines 1-18).

Considering claim 5, which is representative of claim 10, Young discloses the system of claim 1, wherein the film has developing chemical applied thereto (Col 3 Lines 59-61).

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Considering claim 6, Young teaches the system of claim 1, wherein the processing circuitry is further operable to save a last operating point of one of the group consisting of the first sensor and the first light source in a storage medium (Col 15 Lines 11-18).

Regarding claim 8, Young teaches the method of claim 7, further comprising adjusting image data obtained from the film in response to the first and second outputs (Col 10 Lines 56-61).

Regarding claim 9, Young teaches the method of claim 8, wherein the image data are adjusted in response to a gain level derived from the first and second outputs (Col 14 Lines 58-65).

Considering claim 13, which is representative of claims 21-25,31-32,Young discloses a system for developing and processing film comprising: an applicator operable to coat a processing solution onto the film, the processing solution initiating development of the film (Col 3 Lines 56-67); a light source operable to illuminate the coated film with light; a sensor operable to measure the light from the coated film; and processing circuitry operable to vary an intensity of the light illuminating the coated film (Col 4 Lines 8-29).

Considering claim 14, Young discloses the system of claim 13, wherein the processing circuitry operates to vary the intensity of the light in response to a sensor measurement from an unexposed portion of the coated film (Col 7 Lines 23-44).

Considering claim 15, Young teaches the system of claim 14, wherein the film is substantially dry (Col 3 Lines 56-67).

Considering claim 16, Young teaches the system of claim 13, wherein the sensor is operable to measure light transmitted from the coated film.

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Regarding claim 17, Young discloses the system of claim 13, wherein the sensor is operable to measure light reflected from the coated film.

Regarding claim 18, Young discloses the system of claim 17, wherein the light operates to produce infrared light (Col 4 Lines 8-29).

Regarding claim 19, Young teaches the system of claim 17, wherein the light operates to produce visible light (Col 4 Lines 8-29).

Regarding claim 20, Young teaches the system of claim 13, wherein the processing circuitry operates to vary the intensity of the light illuminating the coated film to substantially prevent saturation of the sensor (Col 9 Lines 21-26).

Considering claim 26, Young teaches the system of claim 25, wherein the light source produces the visible light and the infrared light in series (Col 4 Lines 8-29).

Regarding claim 27, Young teaches the system of claim 25, wherein the light source produces the visible light and the infrared light in combination (Col 4 Lines 8-29).

Regarding claim 29, Young discloses the system of claim 28; wherein the processing circuitry adjusts the output of the light source by controlling energy the light source gives off as a function of time (Col 9 Lines 41-62).

Considering claim 30, the system of claim 28, wherein the processing circuitry adjusts the output of the light source by controlling energy the light source gives off as a function of amplitude (Col 9 Lines 41-62).

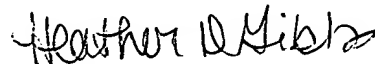
### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heather D Gibbs whose telephone number is 703-306-4152. The examiner can normally be reached on M-F 8AM-4PM.

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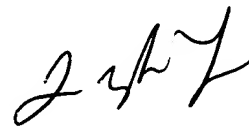
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward L. Coles can be reached on 703-305-4712. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Heather D Gibbs  
Examiner  
Art Unit 2622

hdg



TWYLER LAMB  
PRIMARY EXAMINER